

**ORIGINAL**

AO 243 (Rev. 2/95)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

93-50028

<b>United States District Court</b>		District <b>EASTERN District of MICHIGAN</b>
Name of Movant <b>SHAWN Eugene Wimberly</b>	Prisoner No. <b>47720-008</b>	Case No. <b>93-CR-50028</b>
Place of Confinement <b>FCI - EIKTON PO BOX 10 LISBON OHIO 44432</b>		
UNITED STATES OF AMERICA v. <b>SHAWN Eugene Wimberly</b> (name under which convicted)		
<b>MOTION</b>		
1. Name and location of court which entered the judgment of conviction under attack <b>U.S. District Court Eastern District of Michigan United States Courthouse</b> <b>600 Church Street, Flint, Mich 48502</b> 2. Date of judgment of conviction <b>MARCH 1, 2004</b> 3. Length of sentence <b>127 MONTHS</b> 4. Nature of offense involved (all counts) <b>Count Two: CONSPIRACY to Distribute Controlled Substances</b> <b>Twelve: Possession with Intent to Distribute Cocaine</b> <b>Thirteen: Distribution of Cocaine And Aiding and Abetting</b>		
5. What was your plea? (Check one) (a) Not guilty <input type="checkbox"/> (b) Guilty <input checked="" type="checkbox"/> (c) Nolo contendere <input type="checkbox"/>		
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:		
6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input type="checkbox"/> (b) Judge only <input type="checkbox"/>		
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input type="checkbox"/>		
8. Did you appeal from the judgment of conviction? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		

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9. If you did appeal, answer the following:

(a) Name of court

(b) Result

(c) Date of result

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court

(2) Nature of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

(6) Date of result

(b) As to any second petition, application or motion give the same information:

(1) Name of court

(2) Name of proceeding

(3) Grounds raised

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

(6) Date of result

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: *PSI CONTAINED INACCURATE INFORMATION*

Supporting FACTS (state *briefly* without citing cases or law):

*that my PSI contained INACCURATE information that was used by the Court to RAISE my Sentence.*

B. Ground two: *ENHANCEMENT*

Supporting FACTS (state *briefly* without citing cases or law):

*Improper enhancement for an Alleged LEADERSHIP Management Role that WAS Added to my Base Level*

C. Ground three: *RELEVANT CONDUCT ISSUES*

Supporting FACTS (state *briefly* without citing cases or law):

*RELEVANT CONDUCT from 1987 to 1993 THAT WAS INACCURATE.*

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D. Ground four: INEffective Assistance of Counsel

Supporting FACTS (state briefly without citing cases or law):

That I did NOT Receive effective Assistance of Counsel  
 at Pretrial, Sentencing And Appellate Stages of my CASE  
 He NEVER Filed my direct Appeal Like I ASK Him  
 AND NEVER Contested the Deng Amount Like I TOLD Him

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

Some of this grounds  
 WAS NOT Presented UNTIL the Blakely, Booker, Fan Fan  
 ISSUE WAS over with that's what I WAS Waiting  
 on. But my LAWYER WASN'T doing what I ASK Him. He KEEP  
 telling me they going to give you 30 YRS so take the Plea.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing

Ralph Richardson  
 2910 E. Jefferson Detroit, Mich 48207

(b) At arraignment and plea

(c) At trial

(d) At sentencing

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(c) On appeal

(f) In any post-conviction proceeding

(g) On appeal from any adverse ruling in a post-conviction proceeding

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

2-21-05  
Date

Shawn Winkler  
Signature of Movant

ORIGINAL

MR. SHAWN Wimberly  
47720-008  
FCI-ELKTON  
P.O. Box 10  
Lisbon, Ohio 44432

February 21, 2005

Clerk of Courts  
U.S. District Court  
EASTERN District of Michigan  
United States District Courthouse  
600 Church Street  
Flint, Michigan 48502

**FILED**

FEB 28 2005

U.S. DISTRICT COURT  
FLINT, MICHIGAN

RE: U.S. V. Shawn Wimberly  
CASE NO. 93-cr-50028-PVG-4

DEAR SIR OR Madam:

Please Find enclosed A Preliminary draft of A 2255 Motion which I am Filing PRO SE With the Court today. I AM doing this to Preserve my Filing deadline which I understand is Rapidly Approaching. I want the Court to be Aware that my Family And myself IS in the PROCESS of Retaining Counsel who will be entering his Appearance in my CASE And will Supplement this Motion With a Properly Researched 2255 Motion And Memorandum in Support.

I would Appreciate your Sending to me A time-Stamped Copy of Motion

Respectfully Submitted

Shawn Wimberly  
Shawn Wimberly